TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 985.

THE UNITED STATES, APPELLANTS,

vs.

DE WITT C. REDGRAVE.

APPEAL FROM THE COURT OF CLAIMS.

FILED SEPTEMBER 29, 1885.

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1 I.—*Petition—Filed August* 11, 1883.—*J. R.*

In the Court of Claims.

DE WITT C. REDGRAVE
vs.
THE UNITED STATES. } No. 13,983.

To the honorable Court of Claims:

De Witt C. Redgrave respectfully prefers his petition, to wit:

1. That he is a citizen of the United States and of the State of Maryland.

2. That on the 10th day of June, 1881, he completed the four years' course of instruction at the United States Naval Academy; graduated therefrom as a cadet engineer, and was thereupon formally detached from said Academy and entered into active service.

That thereafter he was regularly paid as a graduated cadet engineer, under the provisions of section 1556 of the Revised Statutes, until the 5th day of August, 1882, since which date, and up to and including June 30, 1883, he has only received the lower rate of pay provided by law for "naval cadets;" although during all of the said period he was (and he still claims to be) a graduated cadet engineer, entitled to all the pay and allowances of said office.

Your petitioner therefore alleges that from the said 5th day of August, 1882, up to and including June 30, 1883, there is justly due to him a balance of pay amounting to $99.32, being the difference between the pay which he was entitled to receive during said period as a cadet en-
2 gineer and the amount which he actually did receive. Wherefore he prays judgment for that amount.

DE WITT C. REDGRAVE,
Petitioner.

STATE OF MARYLAND,
City of Baltimore, ss:

Personally appeared before me, a notary public in and for the city and State aforesaid, De Witt C. Redgrave, to me personally known, who made oath in due form and according to law that the statements made in the foregoing petitionare true, and that no assignment or transfer of the claim as herein set forth, or any part thereof or interest therein, has ever been made, to the best of his knowledge and belief.

Witness my hand and seal, this 10th day of August, 1883.

[L. S.] EDWARD RAINE, [SEAL.]
Notary Public.

3 II.—*General traverse—Filed February* 6, 1884.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant

has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Assistant Attorney-General.

4 III.—*Findings of fact and conclusion of law.*

FINDINGS OF FACT.

This cause having been heard before the Court of Claims, the court, upon the evidence, finds the facts as follows:

I.

In 1877 claimant entered the Naval Academy as a cadet engineer, and on June 10, 1881, having successfully passed the final academic examination, received the following certificate signed by the officers of the Academy:

United States Naval Academy.

This certifies that Cadet Engineer De Witt C. Redgrave has completed the prescribed course of study at the United States Naval Academy, and has successfully passed the required examination before the academic board.

In witness whereof we have hereunto set our hands this tenth day of June, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and fifth.

II.

He was thereupon detached from the Naval Academy by the following order:

NAVY DEPARTMENT,
BUREAU OF NAVIGATION AND OFFICE OF DETAIL,
Washington, June 2d, 1881.

SIR: You are hereby detached from the Naval Academy, 10th inst., and you will report to Rear-Admiral Balch on that day for duty on board the U. S. practice steamer Mayflower.

By direction of the Secretary of the Navy.

Respectfully,

WM. D. WHITING,
Chief of Bureau.

Cadet Engineer DE WITT C. REDGRAVE, *U. S. Navy,*
Naval Academy, Annapolis, Md.

III.

He subsequently received the following orders:

NAVY DEPARTMENT,
BUREAU OF NAVIGATION AND OFFICE OF DETAIL,
Washington, August 30th, 1881.

SIR: You are hereby detached from the Mayflower. Proceed home, and regard yourself as waiting orders.

By direction of the Secretary of the Navy.

Respectfully,

WM. D. WHITING,
Chief of Bureau.

Cadet Engineer DE WITT C. REDGRAVE, *U. S. Navy*,
U. S. Practice str. Mayflower, Norfolk, Va.

5

NAVY DEPARTMENT,
BUREAU OF NAVIGATION AND OFFICE OF DETAIL,
Washington, Oct. 28th, 1881.

SIR: Proceed to the navy-yard, League Island, Pa., and report to Commodore Simpson, on the 10th Nov. next, for duty on board the U. S. S. Essex.

By direction of the Secretary of the Navy.

Respectfully,

J. G. WALKER,
Chief of Bureau.

Cadet-Engineer DE WITT C. REDGRAVE, *U. S. Navy*,
Denver, Col.

IV.

On December 12, 1882, the Secretary of the Navy issued the following order:

[General Order No. 302.]

NAVY DEPARTMENT,
Washington, December 12, 1882.

The attention of commanding and other officers is called to the act of Congress approved August 5, 1882, which provides that vacancies in the lower grades of the line, Engineer Corps, and Marine Corps shall hereafter be filled by appointments to be made from the graduates of the Naval Academy, at the conclusion of their six years' course, and in the order of merit, as shall be determined by the academic board of the Naval Academy.

The above applies to all naval cadets who have not completed the prescribed six years' course of instruction.

In order that naval cadets who have completed the four years' course of study at the Naval Academy shall have equal opportunities to prepare for their final examination, it is ordered that those who have been doing duty as cadet-engineers shall, in addition to those duties, be assigned to deck

and division duties, and shall be given every opportunity to acquire a knowledge of navigation, gunnery, and seamanship, as well as of steam engineering; and that those who have been doing duty as cadet-midshipmen shall, in addition to those duties, be given the duties in the fire and engine rooms hitherto performed by cadet-engineers.

All naval cadets will, at the end of their six years' course, be finally examined at the Naval Academy by the academic board.

The duty performed by each naval cadet shall be specified in the column of "remarks," already provided on the quarterly returns called for by General Order No. 290.

Commanding officers of naval vessels are charged with the execution of this order, which affects naval cadets who appear as cadet-midshipmen on pages 25, 26, and 27, Navy Register of July 1, 1882, beginning with and junior to John L. Schock; and those who are designated cadet-engineers on pages 39 and 40 of the same register, beginning with and junior to Jay M. Whitham.

Commanding officers are directed to inform the Department of the date of the receipt of this order.

The attention of commanding officers is also called to paragraph 143, page 51, and paragraphs 3, 4, and 5, page 65, Navy Regulations, edition of 1876. These regulations will be strictly enforced.

WILLIAM E. CHANDLER,
Secretary of the Navy.

V.

On February 8, 1883, circular letters were issued to the various commanders of naval stations as follows:

NAVY DEPARTMENT,
BUREAU OF NAVIGATION AND OFFICE OF DETAIL,
Washington, 8 February, 1883.

SIR: You will issue orders to each of the naval cadets—those heretofore designated as "cadet-midshipmen" and "cadet-engineers," of the class that completes its six years' course in June, 1883, detaching them from the ——— station and directing them to proceed to Annapolis, Md., and report to the Superintendent of the Naval Academy for examination. These orders should be issued in time to enable the cadet to reach Annap-
6 olis between the 1st and 15th of May next. You will also direct the cadets upon their arrival at Annapolis to report by letter to the Bureau, and also inform it of the date of their detachments from the respective vessels to which they are attached.

These orders are made necessary under the provisions of the act of Congress dated 5 August, 1882.

By direction of the Secretary of the Navy.

Respectfully,

J. G. WALKER,
Chief of Bureau.

Rear Admiral ——— ———,
Com'd'g U. S. Naval Force, ——— Station.

VI.

In pursuance of the foregoing letter of instructions, claimant was detached, and reported as follows:

U. S. NAVAL ACADEMY,
Annapolis, Md., April 16th, 1883.

SIR: Having been detached from the U. S. S. Essex on the 24th of March, I have this day reported my return to the Superintendent of the Naval Academy, according to orders.

Very respectfully,

DE WITT C. REDGRAVE,
Naval Cadet, U. S. Navy.

Capt. J. G. WALKER, *U. S. N.*,
Chief of Bureau of Navigation, &c.

U. S. NAVAL ACADEMY,
Annapolis, Md.

Forwarded April 16th, 1883.

F. M. RAMSAY,
Captain, Superintendent.

VII.

June 23, 1883, the following order was issued to claimant:

NAVY DEPARTMENT,
BUREAU OF NAVIGATION AND OFFICE OF DETAIL,
Washington, June 23d, 1883.

SIR: You are hereby detached from the Naval Academy. Proceed home, and will regard yourself as waiting orders.

By direction of the Secretary of the Navy.

Respectfully,

J. G. WALKER,
Chief of Bureau.

Naval Cadet DE WITT C. REDGRAVE, *U. S. Navy,*
Annapolis, Md.

VIII.

June 26, 1883, the following letter was addressed to claimant:

NAVY DEPARTMENT,
Washington, June 26, 1883.

SIR: Having successfully completed your six years' course at the United States Naval Academy, and having been given a certificate of graduation by the academic board, but not being required to fill any vacancy in the naval service happening during the year preceding your graduation, you are hereby honorably discharged from the 30th of June,

and division duties, and shall be given every opportunity to acquire a knowledge of navigation, gunnery, and seamanship, as well as of steam engineering; and that those who have been doing duty as cadet-midshipmen shall, in addition to those duties, be given the duties in the fire and engine rooms hitherto performed by cadet-engineers.

All naval cadets will, at the end of their six years' course, be finally examined at the Naval Academy by the academic board.

The duty performed by each naval cadet shall be specified in the column of "remarks," already provided on the quarterly returns called for by General Order No. 290.

Commanding officers of naval vessels are charged with the execution of this order, which affects naval cadets who appear as cadet-midshipmen on pages 25, 26, and 27, Navy Register of July 1, 1882, beginning with and junior to John L. Schock; and those who are designated cadet-engineers on pages 39 and 40 of the same register, beginning with and junior to Jay M. Whitham.

Commanding officers are directed to inform the Department of the date of the receipt of this order.

The attention of commanding officers is also called to paragraph 143, page 51, and paragraphs 3, 4, and 5, page 65, Navy Regulations, edition of 1876. These regulations will be strictly enforced.

WILLIAM E. CHANDLER,
Secretary of the Navy.

V.

On February 8, 1883, circular letters were issued to the various commanders of naval stations as follows:

NAVY DEPARTMENT,
BUREAU OF NAVIGATION AND OFFICE OF DETAIL,
Washington, 8 February, 1883.

SIR: You will issue orders to each of the naval cadets—those heretofore designated as "cadet-midshipmen" and "cadet-engineers," of the class that completes its six years' course in June, 1883, detaching them from the ——— station and directing them to proceed to Annapolis, Md., and report to the Superintendent of the Naval Academy for examination. These orders should be issued in time to enable the cadet to reach Annap-
6 olis between the 1st and 15th of May next. You will also direct the cadets upon their arrival at Annapolis to report by letter to the Bureau, and also inform it of the date of their detachments from the respective vessels to which they are attached.

These orders are made necessary under the provisions of the act of Congress dated 5 August, 1882.

By direction of the Secretary of the Navy.

Respectfully,

J. G. WALKER,
Chief of Bureau.

Rear Admiral ——— ———,
Com'd'g U. S. Naval Force, ——— Station.

VI.

In pursuance of the foregoing letter of instructions, claimant was detached, and reported as follows:

U. S. NAVAL ACADEMY,
Annapolis, Md., April 16th, 1883.

SIR: Having been detached from the U. S. S. Essex on the 24th of March, I have this day reported my return to the Superintendent of the Naval Academy, according to orders.

Very respectfully,

DE WITT C. REDGRAVE,
Naval Cadet, U. S. Navy.

Capt. J. G. WALKER, *U. S. N.*,
Chief of Bureau of Navigation, &c.

U. S. NAVAL ACADEMY,
Annapolis, Md.

Forwarded April 16th, 1883.

F. M. RAMSAY,
Captain, Superintendent.

VII.

June 23, 1883, the following order was issued to claimant:

NAVY DEPARTMENT,
BUREAU OF NAVIGATION AND OFFICE OF DETAIL,
Washington, June 23d, 1883.

SIR: You are hereby detached from the Naval Academy. Proceed home, and will regard yourself as waiting orders.

By direction of the Secretary of the Navy.

Respectfully,

J. G. WALKER,
Chief of Bureau.

Naval Cadet DE WITT C. REDGRAVE, *U. S. Navy,*
Annapolis, Md.

VIII.

June 26, 1883, the following letter was addressed to claimant:

NAVY DEPARTMENT,
Washington, June 26, 1883.

SIR: Having successfully completed your six years' course at the United States Naval Academy, and having been given a certificate of graduation by the academic board, but not being required to fill any vacancy in the naval service happening during the year preceding your graduation, you are hereby honorably discharged from the 30th of June,

1883, with one year's sea-pay, as prescribed by law for cadet midshipmen, in accordance with the provisions of the act of Congress approved August 5, 1882.

Respectfully,

WM. E. CHANDLER,
Secretary of the Navy.

Naval Cadet DE WITT C. REDGRAVE, *U. S. Navy,*
Annapolis, Md.

7 IX.

From August 5, 1882, to June 30, 1883, the claimant was paid $769.86 for service in the Navy during that period. If paid during the same period as a graduated cadet engineer he would have been entitled to receive $796.71.

Since then the claimant has received no pay and has been held by the Navy Department and the accounting officers of the Treasury to be out of the naval service.

X.

Form of certificate given to midshipmen at the end of four years, by the officers of the Academy:

UNITED STATES NAVAL ACADEMY:

This certifies that Cadet Midshipman Edward E. Capehart has completed the prescribed course of study at the United States Naval Academy, and has successfully passed the required examination before the academic board, preparatory to the two years' course afloat.

In witness whereof we have hereunto set our hands this tenth day of June, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and fifth.

XI.

After leaving the Academy, the claimant and all his classmates were classified on the official Navy Register, issued in July, 1881, as having "graduated;" and up to August 5, 1882, they were regularly paid as such at the rates prescribed by section 1556 of the Revised Statutes, viz: $1,000 at sea, $800 on shore duty, and $600 on leave or waiting orders. In the same manner the cadet engineers who completed their four years' course in 1878, 1879, and 1880 were all regularly classified in the succeeding Navy Registers as having graduated in those years respectively; and prior to August 5, 1882, they were all uniformly paid as such.

XII.

The regulations prescribing the qualifications for appointment of cadet engineers fixed a higher average age by two years for cadet engineers entering the Academy than was required by law for cadet midshipmen so entering. After completing the four years' course, cadet engineers were permanently detached from the Academy, and were never required to re-

turn to that institution. They remained in active service at sea, or upon other duty, two or three years, or longer, until vacancies occurred in the grade of assistant engineer, when they were ordered singly or in groups for examination for promotion, under the provisions of section 1392 of the Revised Statutes, before a Board of Engineer Officers, which held its sessions at Philadelphia.

The last two years of the academic course of cadet midshipmen were spent "at sea in other than practice ships." After four years at the Academy they were temporarily detached from that institution by orders from the Navy Department, and were sent to sea singly or in squads. On shipboard they performed such active duties as were assigned to them. At the end of the two years, they were required to return and did return to the Naval Academy, where they were subjected to a "final graduating examination" before the academic board. If successful at
8 such examination, they received appointments as midshipmen, and were thereafter classified in the Navy Register as having "graduated" at that date, and they were never so designated either in the Navy Register or elsewhere until after they had passed such examination at the end of the six years' course.

CONCLUSION OF LAW.

Upon the foregoing findings the court decides as conclusion of law that the claimant is entitled to recover $26.85.

IV.—*Opinion of the court.*

WELDON, J., delivered the opinion of the court:

The petition alleges that the claimant, on the 10th day of June, 1881, completed the four years' course of study at the United States Naval Academy; graduated therefrom as cadet-engineer; was detached from said Academy at said time, and entered into active service; that up to the 5th day of August, 1882, he received the pay as a graduated cadet-engineer; since that date, and up to June 10, 1883, he has only received the pay of a naval cadet; and that from the said date of August, 1882, up to the 30th of June 1883, there is due the claimant an unpaid balance of $99.32, being the difference between what he received and the pay which by law he was entitled to receive as cadet-engineer, under the act of August 5, 1882.

The findings show that on the 10th day of June, 1881, the claimant had completed the prescribed course of study at the Naval Academy, and successfully passed the required examination before the academic board; that June 2, 1881, a notice was given him by the Secretary of the Navy, detaching him on 10th of June from said institution and ordering him to report on that day for duty on board the United States practice steamer Mayflower. August 30, 1881, an order was issued detaching him from the Mayflower, and directing him to proceed to his home and regard himself as waiting orders. October 28, 1881, an order was issued to him to proceed to the navy-yard at League Island, Pennsylvania, for duty.

June 23, 1883, he was detached from the Naval Academy, and ordered to proceed home to await orders. June 26, 1883, he was notified by the Secretary of the Navy that having completed six years' course of study at

the Academy, and having been given a certificate of graduation, he was honorably discharged from the 30th of June, 1883, pursuant to the act of August 5, 1882.

From August 5, 1882, to June 30, 1883, the claimant was paid $769.86 for services in the Navy; during that period, as a graduated cadet-engineer, he would have been entitled to receive $796.71.

Since then the claimant has received no pay, and has been held by the Navy Department and the accounting officers of the Treasury to be out of the naval service.

The foregoing facts appear in the findings, and present for our consideration the cause of action as made by the petition and findings.

It is contended on the part of the Government that by virtue of the provisions of the act of the 5th of August, 1882, the claimant became a naval cadet, not having completed his course of study at the Academy, but being an undergraduate at the time of the passage of said act; and therefore he has been paid all the law entitles him to receive from the 5th of August, 1882, to the 30th of June, 1883.

9 We quote so much of the act of August 5, 1882, as is material to be considered in this case:

"For pay of the Navy, for the active list, namely, * * * sixty-nine chief engineers, one hundred passed assistant engineers, thirty-five assistant engineers, seventy-three cadet engineers (graduates) * * * one hundred and two cadet-engineers, one hundred and thirty cadet-midshipmen (not graduates); in all, four million forty-eight thousand three hundred dollars.

"Provided, That hereafter there shall be no appointments of cadet-midshipmen or cadet-engineers at the Naval Academy, but in lieu thereof naval cadets shall be appointed from each Congressional district and at large, as now provided by law for cadet-midshipmen, and all the undergraduates at the Naval Academy shall hereafter be designated and called 'naval cadets.'

"And from those who successfully complete the six years' course appointments shall hereafter be made as it is necessary to fill vacancies in the lower grades of the line and Engineer Corps of the Navy and of the Marine Corps.

"And provided further, That no greater number of appointments into these grades shall be made each year than shall equal the number of vacancies which has occurred in the same grades during the preceding year; such appointments to be made from the graduates of the year, at the conclusion of their six years' course, in the order of merit, as determined by the academic board of the Naval Academy, the assignment to the various corps to be made by the Secretary of the Navy upon the recommendation of the academic board.

"But nothing herein contained shall reduce the number of appointments from such graduates below ten in each year, nor deprive of such appointment any graduate who may complete the six years' course during the year eighteen hundred and eighty-two. And if there be a surplus of graduates, those who do not receive such appointment shall be given a certificate of graduation, an honorable discharge, and one year's pay, as now provided by law for cadet-midshipmen. * * *

" * * * That the pay of naval cadets shall be that now allowed by law to cadet-midshipmen; and as much of the money hereby appro-

priated as may be necessary during the fiscal year ending June thirtieth, eighteen hundred and eighty-three, shall be expended for that purpose. * * *

"That no officer now in the service shall be reduced in rank or deprived of his commission by reason of any provision of this act reducing the number of officers in the several corps: Provided, That no further appointments of cadet-engineers shall be made by the Secretary of the Navy under section three of the act of eighteen hundred and seventy-four."

The case made by this record has been in legal substance before this court at a former term, and was most carefully considered after elaborate argument by able counsel, both in the trial and on a motion for a rehearing; and it is not now necessary to restate at length the reasons which induce the conclusion of the court. The case of Leopold v. United States, 18 C. Cls., 546., is one identical in principle with the suit at bar. Some additional facts appear in the findings in this case, but they are not sufficiently material to alter the law announced in the former case. We have in the present proceeding most carefully considered anew the questions of contention, and do not feel warranted in changing the judicial determination of the Leopold case.

It was held in that case: 1st. "Cadet-engineers who had finished their four years' course at the Naval Academy, passed their final academic examinations, and received their diplomas before the passage of the act of August 5, 1882 (22 Stat. L., 285), became graduates, and are not made naval cadets by that act. They are therefore entitled to pay provided by the Revised Statutes, section 1556, page 268. 2d. The provision in the act of August 5, 1882, for the discharge of surplus naval cadet graduates is prospective only, and does not apply to the classes of 1881 and 1882. (Leopold v. United States, 18 C. Cls., 546.)"

Being satisfied with the law as announced by this court in a former adjudication, it is ordered and adjudged that the claimant recover the sum of $26.85, and for that amount judgment will be entered.

10 V.—*Final judgment.*

At a Court of Claims held in the city of Washington, on the 23d day of March, A. D. 1885, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said De Witt C. Redgrave do have and recover of and from the United States the sum of twenty-six dollars and eighty-five cents ($26.85).

11 VI.—*Application for appeal—Filed and allowed June* 15, 1885.

From the judgment rendered in the above-entitled cause, on the 23d day of March, 1885, in favor of claimant, the defendants, by their Attorney-General, on the 15th day of June, 1885, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT A. HOWARD,
Assistant Attorney-General.

Allowed, June 15, 1885.

WILLIAM A. RICHARDSON,
Chief Justice.

12 In the Court of Claims.

VII.

DE WITT C. REDGRAVE
vs.
THE UNITED STATES. } No. 13983.

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the final judgment of the application of defendants for allowance of appeal to the Supreme Court of the United States and of the allowance of the same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 16th day of September, 1885.

[SEAL.] ARCHIBALD HOPKINS,
Ch. Clerk Court of Claims.

(Indorsement on cover:) Court of Claims. No. 985. The Unit States *vs.* Appellant. De Witt C. Redgrave. Court of Claims. September 29, 1885.

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SUPREME COURT U. S.
FILED.
JAN 6 1886
JAMES H. McKENNEY.
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1885.

THE UNITED STATES, APPELLANT,
vs.
DE WITT C. REDGRAVE.
} No. 985.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

Supreme Court of the United States.

OCTOBER TERM, 1885.

THE UNITED STATES, Appellant,
vs.
DE WITT C. REDGRAVE. } No. 985.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

THE CASE.

This is a *test case* inviting the judicial department of the Government to overturn the interpretation put by the Secretary of the Navy on certain provisions of the act of Congress approved 5th August, 1882 (22 Stat., p. 285), in an order, promulgated by him on mature consideration, directing that certain cadet engineers should be held and treated as "undergraduates" in the sense of that law.

The appellee, Redgrave, entered the Naval Academy as a cadet-engineer in 1877 (p. 2).

On the 10th June, 1881, he passed the final academic examination, and received a certificate to that effect (p. 2), and on the same day was detached from the Naval Academy and ordered to report for duty on the U. S. practice steamer Mayflower (p. 2).

On the 30th August, 1881, he was detached from the Mayflower and ordered to proceed home and await orders (p. 3).

On the 28th October, 1881, he was ordered to proceed to League Island and report for duty on the U. S. S. Essex.

On the 12th December, 1882, the Secretary of the Navy issued the following order (pp. 3, 4):

GENERAL ORDER NO. 302.

NAVY DEPARTMENT,
Washington, December 12, 1882.

The attention of commanding and other officers is called to the act of Congress approved August 5, 1882, which provides that vacancies in the lower grades of the line, Engineer Corps, and Marine

Corps shall hereafter be filled by appointments to be made from the graduates of the Naval Academy, at the conclusion of their six years' course, and in the order of merit, as shall be determined by the academic board of the Naval Academy.

The above applies to all naval cadets who have not completed the prescribed six years' course of instruction.

In order that naval cadets who have completed the four years' course of study at the Naval Academy shall have equal opportunities to prepare for their final examination, it is ordered that those who have been doing duty as cadet-engineers shall, in addition to those duties, be assigned to deck and division duties, and shall be given every opportunity to acquire a knowledge of navigation, gunnery, and seamanship, as well as of steam engineering; and that those who have been doing duty as cadet-midshipmen shall, in addition to those duties, be given the duties in the fire and engine rooms hitherto performed by cadet-engineers.

All naval cadets will, at the end of their six years' course, be finally examined at the Naval Academy by the academic board.

The duty performed by each naval cadet shall be specified in the column of "remarks," already provided on the quarterly returns called for by General Order No. 290.

Commanding officers of naval vessels are charged with the execution of this order, which affects naval cadets who appear as cadet-midshipmen on pages 25, 26, and 27, Navy Register of July 1, 1882, beginning with and junior to John L. Schock, and

those who are designated cadet-engineers on pages 39 and 40 of the same register, beginning with and junior to Jay M. Whitham.

Commanding officers are directed to inform the Department of the date of the receipt of this order.

The attention of commanding officers is also called to paragraph 143, page 51, and paragraphs 3, 4, and 5, page 65, Navy Regulations, edition of 1876. These regulations will be strictly enforced.

WILLIAM E. CHANDLER,
Secretary of the Navy.

On February 8, 1883, the following circular letter (p. 4) was issued to commanders of naval stations:

NAVY DEPARTMENT,
BUREAU OF NAVIGATION AND
OFFICE OF DETAIL,
Washington, February 8, 1883.

SIR: You will issue orders to each of the naval cadets, those heretofore designated as "cadet-midshipmen" and "cadet-engineers," of the class that completes its six years' course in June, 1883, detaching them from the station and directing them to proceed to Annapolis, Md., and report to the Superintendent of the Naval Academy for examination. These orders should be issued in time to enable the cadet to reach Annapolis between the 1st and 15th of May next. You will also direct the cadets upon their arrival at Annapolis to report by letter to the Bureau, and also inform it of the date of their detachments from the respective vessels to which they are attached.

These orders are made necessary under the provisions of the act of Congress dated August 5, 1882.
By direction of the Secretary of the Navy.
Respectfully,

J. G. WALKER,
Chief of Bureau.

——Rear-Admiral ——— ———,
Com'd'g U. S. Naval Force, ——— *Station.*

Pursuant to this letter, the appellee was detached from the Essex, and on the 16th April, 1883, reported to the Superintendent of the Naval Academy (p. 5).

On the 23d June, 1883, appellee was detached from the Academy, and ordered to proceed home and await orders (p. 5).

On the 26th June, 1883, the appellee received the following letter from the Secretary of the Navy (pp. 5, 6):

NAVY DEPARTMENT,
Washington, June 26, 1883.

SIR: Having successfully completed your six years' course at the United States Naval Academy, and having been given a certificate of graduation by the academic board, but not being required to fill any vacancy in the naval service happening during the year preceding your graduation, you are hereby honorably discharged from the 30th of June, 1883,

with one year's sea-pay, as prescribed by law for cadet-midshipmen, in accordance with the provisions of the act of Congress approved August 5, 1882.

Respectfully,

WM. E. CHANDLER,
Secretary of the Navy.

Naval Cadet DE WITT C. REDGRAVE,
U. S. Navy, Annapolis, Md.

The provisions in the act of August, 1882, to which this letter refers, are as follows:

For pay of the Navy, for the active list, namely: * * * Sixty-nine chief engineers, one hundred passed assistant engineers, thirty-five assistant engineers, seventy-three cadet-engineers (graduates), * * * one hundred and two cadet-engineers, one hundred and thirty cadet-midshipmen (not graduates); in all, four million forty-eight thousand three hundred dollars.

Provided, That hereafter there shall be no appointments of cadet-midshipmen or cadet-engineers at the Naval Academy, but in lieu thereof naval cadets shall be appointed from each Congressional district and at large, as now provided by law for cadet-midshipmen, and all the undergraduates at the Naval Academy shall hereafter be designated and called "naval cadets";

And from those who successfully complete the six years' course, appointments shall hereafter be made as it is necessary to fill vacancies in the lower grades of the line, and Engineer Corps of the Navy and of the Marine Corps:

And provided further, That no greater number of

appointments into these grades shall be made each year than shall equal the number of vacancies which has occurred in the same grades during the preceding year; and such appointments to be made from the graduates of the year, at the conclusion of their six years' course in the order of merit, as determined by the academic board of the Naval Academy; the assignment to the various corps to be made by the Secretary of the Navy, upon the recommendation of the academic board.

But nothing herein contained shall reduce the number of appointments from such graduates below ten in each year, nor deprive of such appointment any graduate who may complete the six years' course during the year eighteen hundred and eighty-two. And if there be a surplus of graduates, those who do not receive such appointment shall be given a certificate of graduation, an honorable discharge, and one year's pay, as now provided by law for cadet-midshipmen. * * *

* * * That the pay of naval cadets shall be that now allowed by law to cadet-midshipmen, and as much of the money hereby appropriated as may be necessary during the fiscal year ending June thirtieth, eighteen hundred and eighty-three, shall be expended for that purpose. * * *

That no officer now in the service shall be reduced in rank or deprived of his commission by reason of any provision of this act reducing the number of officers in the several staff corps: *Provided*, That no further appointments of cadet-engineers shall be made by the Secretary of the Navy under section three of the act of eighteen hundred and seventy-four.

After leaving the Academy the appellee and his classmates were classified in the official Navy Register for July, 1881, as having been "graduated"; and up to the 5th August, 1882, they were paid as graduates under section 1556, Revised Statutes; and the cadet-engineers who finished their four years' course in 1878, 1879, and 1880 were classified and paid in the same manner. But from the 5th August, 1882, to 30th June, 1883, appellee was paid less than the pay of a graduated cadet-engineer, and this suit is to recover the difference. Since the 30th June, 1883, appellee has received no pay, and been treated as out of the naval service (p. 6).

The form of certificate given to midshipmen at the end of five years is as follows (p. 6):

> UNITED STATES NAVAL ACADEMY:
>
> This certifies that Cadet-Midshipman Edward E. Capehart has completed the prescribed course of study at the United States Naval Academy, and has successfully passed the required examination before the academic board, preparatory to the two years' course afloat.
>
> In witness whereof we have hereunto set our hands this tenth day of June, in the year of our

Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and fifth.

The court also found as follows:

XII.

The regulations prescribing the qualifications for appointment of cadet-engineers fixed a higher average age by two years for cadet-engineers entering the Academy than was required by law for cadet-midshipmen so entering. After completing the four years' course cadet-engineers were permanently detached from the Academy, and were never required to return to that institution. They remained in active service at sea, or upon other duty, two or three years or longer, until vacancies occurred in the grade of assistant engineer, when they were ordered singly or in groups for examination for promotion, under the provisions of section 1392 of the Revised Statutes, before a board of engineer officers, which held its sessions at Philadelphia.

The last two years of the academic course of cadet-midshipmen were spent "at sea in other than practice ships." After four years at the Academy they were temporarily detached from that institution, by orders from the Navy Department, and were sent to sea singly or in squads. On shipboard they performed such active duties as were assigned to them. At the end of the two years they were required to return and did return to the Naval Academy, where they were subjected to a "final graduating examination" before the academic board.

If successful at such examination they received appointments as midshipmen, and were thereafter classified in the Navy Register as having "graduated" at that date, and they were never so designated either in the Navy Register or elsewhere until they had passed such examination at the end of the six years' course.

Upon this state of facts the court rendered judgment for the claimant.

Grounds of Appeal.

(1) The court committed error in holding that the claimant was unaffected by the act of the 5th of August, 1882, and retained his place in the Navy notwithstanding that statute and the order of the Secretary pursuant thereto, and,

(2) In holding that the appellee was not removable by the Secretary of the Navy outside and irrespective of the said act.

Argument in Reply.

The stress of the argument on the other side consists in the attempted distinction between a cadet-engineer and a cadet-midshipman after passing the examination at the end of four years.

According to that argument, cadet-engineers, like the appellee, who had merely passed this examination, when the act of August, 1882, went into effect, did not come within the term *undergraduate*, as employed by that act, whereas cadet-midshipmen, who had at that time passed that examination, *did come within that term.*

It would seem, however, that the distinction relied on is insubstantial and not warranted by the law. In our view the *status* of cadet engineers and cadet midshipmen was, at the time the act of August, 1882, went into operation, and is now *precisely the same.*

Each of these two classes of cadets must undergo examination before admission into the academy (§§ 1515, 1523, Rev. Stat.).*

The course prescribed for each is six years (§§ 1520, 1524, Rev. Stat.).

The law contemplates that the members of each class shall be subjected to examination from time to time (§§ 1519, 1525, Rev. Stat.).

* The sections of the Revised Statutes referred to will be found in the appendix of this brief.

When cadet midshipmen "shall have passed successfully the graduating examination of the Academy, they shall receive appointments as midshipmen, and shall take rank according to their proficiency," &c. (§ 1521 Rev. Stat.).

And "cadet engineers who are graduated with credit in the scientific and mechanical class of the Naval Academy, may, upon the recommendation of the *academic board*, be appointed by the President and confirmed by the Senate as second assistant engineers" (§ 1394, Rev. Stat.).

Owing to the small number of the Engineer Corps, the cadet-engineer, after passing the final and graduating examination at the end of the six-year course, might have to remain, under the law as it stood when the act of August, 1882, was passed, a cadet-engineer by designation until a vacancy occurred in the grade of second assistant engineer, whereas the cadet-midshipman, upon passing the final graduating examination, at once ceased to be called a cadet by being appointed a full midshipman. That this distinction between the two classes involves no difference of

status is shown very plainly by the following provisions as to the pay of each class:

> "Midshipmen, after graduation, when at sea, one thousand dollars; on shore duty, eight hundred dollars; on leave or waiting orders, six hundred dollars."
>
> "Cadet-midshipmen, five hundred dollars."
>
> "Cadet-engineers, before final academic examination, five hundred dollars; after final *academic* examination and until warranted as assistant engineers, when on duty at sea, one thousand dollars; on shore duty, eight hundred dollars; on leave or waiting orders, six hundred dollars." (§ 1556 Rev. Stat.).

In the face of this legislation it is contended, and has been three times decided by the Court of Claims, that a cadet-engineer who has passed successfully the examination to which *all* cadets who have been in the academy four years are subjected is *ipso facto* in the situation in which a cadet-midshipman can only be who has passed a successful examination *at the end of six years.*

That is to say, the cadet-engineer, without any experience at sea, and with hardly any more than a theoretical acquaintance with nautical engines, is, by this reading of the law, placed on a footing with a cadet-midshipman who has added

to his theoretical knowledge *two years of service at sea!*

It is certainly very remarkable that Congress should have intended to give a partially educated cadet-engineer the very same pay as a midshipman receives *after he has laid aside the quality of cadet* and become permanently enrolled in the naval service. And it is respectfully submitted that the language of the legislature must be entirely free from doubt before an interpretation involving such an inconsistency can be sanctioned.

It is, indeed, not to be wondered at that, we take leave to remark at this point, the argument on the other side should be supported more by considerations outside the statute than by anything in it.

It is not pretended that the successful result of his examination at the end of the fourth year of his course entitled the cadet-engineer to promotion as assistant engineer; that advancement depended on the results of two years more of service. But if the cadet-engineer was, in respect of pay and rank, the peer of a cadet-midshipman

who had earned the promotion to midshipman at the end of the six years' course, why should *he* not have had the same right to promotion at the end of four years?

Here, then, is another instance of inconsistency and injustice, to which the reading of the law contended for would have led, if that reading had been fully acted on.

The act of 5th August, 1882 (22 Stat., p. 285), after providing for the pay of "73 cadet-engineers (graduates)" and 102 cadet-engineers and 130 cadet-midshipmen (not graduates), enacts that no more cadet-midshipmen or cadet-engineers should be appointed, and that thereafter "naval cadets" only should be appointed, and that "all the undergraduates at the Naval Academy shall hereafter be designated and called naval cadets." It declares that vacancies in the lower grades of the line and of the Engineer and Marine Corps of the Navy shall be filled from those who successfully complete the six-year course.

It then enacts that such appointments shall not exceed the vacancies that have occurred during

the preceding year, with a *proviso* that such appointments shall in no case fall below *ten* in each year, and that the right to an appointment of a cadet, who should complete his six-years course in the year 1882, should not be lost. It then provides that any surplus of graduates who do not receive appointments shall receive certificates of graduation, an honorable discharge, and a year's pay, as then provided for cadet-midshipmen; and that so much of section 1521 (Rev. Stat.) as is inconsistent with this law is repealed.

The appellee had not completed his six-years course at the time this law went into effect. It is contended, however, in his behalf that he was not an "*undergraduate*" and therefore did not become a naval cadet with the consequent liability to be honorably discharged at the termination of the six-year course.

The legislature must be understood to have used words in their usual acceptation, and, on referring to Webster, we find the definition of undergraduate to be "a student or member of a university or college who has not taken his first

degree." According to this definition, then, a cadet-midshipman or a cadet-engineer is an undergraduate until, in the one case, he have become a midshipman or, in the other, an assistant engineer, or, at least, have become entitled to be made an assistant engineer so soon as a vacancy shall occur, which advancement, or right to advancement, stands to him in the room of the ordinary academical degree, as must be inferred, it would seem, to give sense to the terms "graduate" and "undergraduate," as used in the law.

Hence the law (§ 1521 Rev. Stat.) provides that when a cadet-midshipman "shall have passed successfully the *graduating* examination at the academy" he shall be appointed a midshipman, by which, clearly, is not meant the intermediate examination at the end of four years, but the one at the termination of the six years' course.

In like manner the law, as already stated, declares (§ 1394 Rev. Stat.) that—

> "Cadet engineers who are graduated with credit in the scientific and mechanical class of the Naval Academy may, upon the recommendation of the academic board, be appointed by the President and confirmed by the Senate as second assistant engineers."

The term "graduated," as here used, must refer to the final examination: otherwise the passing successfully the examination at the end of four years would entitle a cadet-engineer to promotion, if recommended by the academic board, two years before the completion of his course of instruction, which Congress could not have intended. This is made clearer, if possible, by the provision (§ 1556 Rev. Stat.) fixing the pay of cadet-engineers, *after final examination* and until warranted as assistant engineers, at the same rates as that of midshipmen.

It seems to be conceded that a cadet-midshipman has no right to promotion, or to draw more than $500 a year as pay, until he has successfully completed his six years' course.

Now, when the law declares that a cadet-engineer shall receive no more than $500 a year until after "*final academic examination*," must not Congress be understood to mean by "final academic examination" the examination which is held at the end of the six-years course?

Congress has made the term of study the same for both classes of cadets: it has put them

on the same footing in other respects, and it would be unlooked for to find that it had made so decided a departure from its manifest general intention as to give cadet-engineers the advantage of an increase of pay at the end of four years, and, at the same time, debar cadet-midshipmen from the same right until after going through the whole course of *six years*.

It is not difficult to understand why the *curriculum* for cadet-engineers was lengthened and made the same as that for midshipmen, but it is difficult to see why cadet-engineers should be entitled to receive full midshipmen's pay at the end of four years any more than midshipmen, who, we have seen, must wait until the end of the full course of six years. We fail to discover the intention of Congress to make this invidious discrimination.

Again, the certificate given the cadet-engineer and the cadet-midshipman at the end of four years does not use the term graduate, but declares merely that the cadet has completed the prescribed course of study at the Academy and successfully

passed the required examination before the academic board, with the additional words, in the case of cadet-midshipmen, "preparatory to the two years' course afloat," which words would have been otherwise implied and were entirely useless, as the law or regulations had already declared as much. (*Vide* findings I and X.)

But, aside from antecedent legislation, we think it appears satisfactorily by the act of the 5th August, 1882, that it was the intention of Congress to include in the term "undergraduates" all cadet-engineers who should not complete the six years' course in 1882.

It expressly declares that in each year all vacancies occurring during the preceding year in the lower grades in the line, the Engineer Corps and Marine Corps, shall be filled "from the *graduates of the year*, at the conclusion of their six years' course," and not from the graduates of *several years preceding*, at the conclusion of their six years' course, as would result from the view of the learned Court of Claims, should it prevail.

It being then from *the graduates of the year in which the appointments are made, at the conclusion of their six years' course*, that the appointees must be selected, we have a legislative declaration that by *graduate* is meant a cadet who has successfully completed the six years' course. *This declared coincidence between graduation and the completion of the six years' course would seem to be conclusive.*

If Congress had enacted that vacancies should be filled from *graduates at the conclusion of their six years' course*, it might have been said, plausibly, that if a cadet could only graduate at the end of the six years' course, why do more than declare that vacancies shall be filled from *graduates*. But even then the argument would not have much force, for such pleonasms or repetitions frequently occur in statutes, and are employed *ex abundanti cautelâ* and to prevent doubt or question. The legislation relating to this case affords a striking example of what we have said

Section 1556 (Rev. Stat.) in designating the pay of midshipmen refers to them as "midship-

men, *after graduation*," whereas nothing is clearer than that a cadet can only become a midshipman after graduation. But could it be argued from this that there might be a midshipman *before* graduation? And yet the case of the appellee rests on the same sort of argument.

But in the act of August, 1882, Congress has left no room for doubt as to its meaning, by declaring that, according to its understanding, *a cadet becomes a graduate at the end of his six years' course and not before.*

The act uses the words "at the conclusion of their six years' course" to prevent any possible interpretation that would include cadets who had gone through the examination at the end of four years, and who, without any warrant in the law, and, no doubt, for the want of a better word, are called, popularly, "graduates."

But to put beyond all doubt that Congress meant by the term "graduates" those only who had passed through, successfully, the full *curricu-*

lum of six years, we call attention to the require ment of the act that—

> If there be a surplus of graduates, those who do not receive such appointment shall be given a *certificate of graduation*, an honorable discharge, and one year's pay, as now provided by law for cadet-midshipmen. * * *

Now, we should be glad to be informed upon what ground Congress directed that "*a certificate of graduation*" should be given to cadets who were *already graduates, who already had in their possession certificates of graduation, and who were rated as graduates!* According, then, to the view taken by the learned court below, this requirement of the law is clearly one of supererogation. On the other hand, we are not disposed to think that Congress was doing a vain thing in requiring the certificate of graduation. So far from it, indeed, we think Congress regarded the certificate as *necessary* in order to put the cadets in possession of authentic evidence of their graduation.

So far, now, from the appellee and others in like case having been injured by the act of 5th

August, 1882, that act had no other effect upon them than to change their designation from cadet-engineer to naval cadets, leaving them in precisely the same *status* afterwards as they were in before. No doubt it deprived them of a certain consideration and of certain emoluments which they had enjoyed through an erroneous view of the law, but to these things they had no right, and they probably would have been deprived of them if the act in question had never been passed. At any rate, it cannot for a moment be supposed that Congress had any intention to perpetuate those abuses that had crept into the service, and only needed to be scrutinized to be abolished. The scrutiny induced by the act of 1882 was followed by a prompt return to the law.

In reply to the argument that the provision for the discharge of surplus naval cadet graduates in the act of August, 1882, was not intended to apply to the classes of 1881 and 1882, we scarcely need do more than say that if the act was intended to be prospective in this particular it is rather unaccountable that Congress introduced a

saving clause in favor "of any graduate who may complete the six years' course during the year eighteen hundred and eighty-two." This was intended to meet the case of a cadet at sea, and not able to return to graduate until after the appointments to vacancies had been made.

Congress evidently thought that without some such provision any cadet so situated would, upon graduation, fall into the class of supernumeraries and be discharged. This certainly does not look as if it was in the mind of Congress to make the law prospective. Besides, upon what tenable ground can it be said that the act operated presently on one class of cadets and *not on others?*

One thing is very clear, that Congress was impressed by the necessity of reducing the number of officers in the Navy, and the plan it pursued was to prohibit any more appointments in the line until the number should be reduced 115, and in the staff until there should be a reduction of 140, one hundred of which should be in the Engineer Corps, and to limit the appointments from

the class of graduate cadets in any one year to the vacancies that had occurred in the preceding year, with the *proviso* that such appointments should never fall below ten in any one year, and to require that the supernumeraries should be honorably discharged with a year's pay.

Now, when it is considered that the effect of holding the act to be prospective as to the classes of 1881 and 1882 is to introduce into our already overgrown Navy (which in 1882 had 1,817 officers to 31 vessels in commission, *being 59 officers to each ship and one officer to every five seamen*, with a possibility of an addition, *every year*, of 50 cadet-midshipmen and 25 cadet-engineers), a hybrid class of cadets condemned to remain at a standstill without any possible chance of promotion so long as the present law remains in force, it is hard to believe that Congress could have been so regardless of the economical intention of the law as to provide that these useless supernumeraries should be fastened on the Treasury. It would seem that an interpretation of a law *having retrenchment in view* that leads to such a result must be unsound, necessarily. It is sub-

mitted that, before such a meaning can be imputed to Congress, the language used must be so explicit *as to compel it.*

The argument of the learned Court of Claims, that when a cadet-engineer gets his diploma at the end of four years he is detached from the Academy for good and enters upon his life-work, would seem to be answered by section 1394 (Rev. Stat.), which provides that—

> Cadet-engineers who are graduated with credit in the scientific and mechanical class of the *Naval Academy* may, upon the recommendation of the *academic board*, be appointed by the President and confirmed by the Senate as second assistant engineers.

Clearly, the graduation referred to in this section is the graduation at the end of the six years' course, and there can be no two minds about its being the intention of Congress that the examination at the end of the six years' course should take place at the Naval Academy, and that the recommendation for promotion should emanate from the same source. If these matters have been ordered otherwise, it has been in a plain

disregard of the statutes, which should not be countenanced.

The Court of Claims in the case of Leopold *vs.* The United States (18 Ct. Cl. 546), upon the authority of which the case at bar was decided, does not notice the language already commented on (*supra*), that appointments from the cadets to fill vacancies made in each year must be made "from the graduates *of the year* at the conclusion of their six years' course;" that is to say, these appointments must be made from the graduates *of the same year as that in which the appointments are made*, which graduates could not *possibly* be of the number of those holding a diploma given at the end of a four years' course, because *they must have gone through the whole six years' course.* This language, not noticed by the learned court, would seem to be conclusive of the question in hand.

With so clear an indication of the intention of Congress, it is not worth while to refine upon the words "undergraduates at the Naval Academy," but it may be said in this behalf that, as the law requires all cadets undergoing sea service to re-

turn to the Naval Academy to be graduated and recommended for promotion, it may very reasonably be urged that such cadets are as much at the Naval Academy as a geological class away on an exploring expedition is at the college from whose walls it was sent. Certainly if the cadets at West Point were required to spend two years of their course in the Rocky Mountains, it might without impropriety be said that they were at West Point during their service in that remote region. Indeed, the eminent court below, I venture to say, with great respect, seems to lose sight of the fact that the sea service of all cadets is a part of the course of instruction of the Naval Academy, and that they are not sent to sea for service, saving in so far as that service is proper for their instruction, and that the cadet never loses the character of student until he has completed the six years' course, and that when aboard ship he is not regarded as a part of the ship's company of officers.

The argument deduced from the continued use of the unauthorized appellation "graduates" in

the appropriation for 73 cadet-engineers in the act of August, 1882, and the appropriation in the act of 1883 for "cadet-engineers" is not of any significance. As to the act of August, 1882, it is demonstrable, as we have seen, that it warrants no such meaning as is imputed to it, and as to the act of 1883, it would be a strange view to regard the language of this appropriation bill as operating an implied repeal of the act of 1882 by the mere manner of the designation of the objects of an appropriation. The truth is, the terms employed in both statutes were evidently carelessly taken from some former act, and, in all probability, put in the bill of 1882 *before the important legislation involved in this case was ingrafted on it.* Such marks of haste are to be expected, and often occur, in this sort of legislation.

An argument is attempted to be built on the practical interpretation put by the Navy Department on the law regulating the *status* of cadets, but such a construction will not be allowed to nullify the manifest meaning of a statute. It is true that in cases *of ambiguity and doubt* this court

has said time and again that it will generally defer to the established construction (Swift Co. *v.* U , S. 105, U. S., 695, and cases cited), but it has never said that the Executive can repeal a law by giving it a sense its words do not warrant.

On the contrary, it was said in the well-known case, Decatur *v.* Paulding (14 Pet., 515), that while a mandamus could not be issued to the Secretary of the Navy for the purpose of controlling his discretion in the interpretation of a statute which it was his duty to carry out, and therefore expound, yet, that—

> If a suit should come before this court which involved the construction of any of these laws, the court certainly would not be bound to adopt the construction given by the head of a Department. And if they supposed his decision to be wrong they would, of course, so pronounce their judgment.

Any other rule is impossible if this Government is to continue to be a government of law and not of Executive discretion.

Taking a practical view of the alleged invasion of the rights of the appellee and those in like case with him, it seems somewhat remarkable that, in

the face of the refusal of the Navy Department to accept the decision of the Court of Claims in Leopold's case, two sessions of Congress have passed without any legislative declaration on the subject—an omission not readily explained, if the action of the Secretary of the Navy, as to these cadets, was in violation of the true intent and meaning of the statute.

Was a cadet-engineer an officer?

Cadet-engineers were appointed by the Secretary of the Navy (§ 1523 Rev. Stat.), but it is said by the learned court below that they are not removable by him, saving under section 1229 Revised Statutes, which prohibits the dismissal in time of peace of an officer of the military or naval service except upon the sentence of a court-martial requiring his removal, or in commutation of a sentence of such court; or under section 1525 Revised Statutes, which provides that if a cadet is found deficient at any examination or dismissed for misconduct, he shall not be continued in the Academy or in the service except upon the recommendation of the academic board.

As none of the conditions contemplated by these provisions of law exist in this case, it is argued that the Secretary had no power to remove the appellee and his classmates, as incidental to the power of appointment vested in him by law.

In reply to this view, we submit that section 1229 has no relevancy to this case, for the reason that the appellee was not an officer in the military or naval service.

A cadet-engineer, until after graduation at the end of the six years' course, is to be regarded as undergoing a sort of apprenticeship, for the purpose *of qualifying him to be an officer*. He does not become an officer by graduation. So far from it, he cannot become one except by appointment by the President and confirmation by the Senate (§ 1394 Rev. Stat.). His appointment as cadet was one thing, and his appointment as assistant engineer was another and a different thing.

In giving a ship her complement of engineers, the cadet-engineers who are to sail in her are not

taken into account. Both cadet-engineers and cadet-midshipmen are, when afloat, *mere supernumeraries*, and they are such because the prime object of sending them to sea is to enable them to acquire that practical instruction which is indispensable to fit them for becoming officers, and not to imperil life and property by putting them under the responsibility to which an officer is subjected.

Their tenure has no permanency, for they are liable to be dismissed for failure *at any examination* the authorities may see fit to require. In short, cadets are mere tyros, who may *grow* to be officers should their proficiency be such, at the end of their course, as to commend them to the appointing power.

The fact that they cannot be officers without a regular appointment shows that their previous *status* is that of apprentices or learners.

As to section 1525, it is only necessary to say that it provides merely that when a cadet is de-

ficient at an examination or dismissed for misconduct he must leave the Academy and the service, unless the academic board should recommend that he be retained, and was intended clearly as a restriction on the Secretary's appointing power, by inhibiting the reappointment of cadets who had been found wanting in the particulars mentioned: but has no bearing at all upon his power to dismiss, for it is submitted as entirely inadmissible to hold that this section amounts to a prohibition to the Secretary to dismiss a cadet, except upon the grounds stated in the section.

If this view of that section is sound, then, according to the authorities referred to by the learned Chief Justice of the Court of Claims in Perkins's case, No. 986, of this current term, beginning with the well-known case, *ex parte* Hennen (13 Pet., 256), the Secretary of the Navy had, as an incident of his power to appoint, the power to dismiss the appellee, outside the act of the 5th August, 1882.

It is submitted, with great deference to the learned Court of Claims, that its judgment in this case should be reversed, and the case remanded with instructions to dismiss the petition.

WM. A. MAURY,
Assistant Attorney-General.

APPENDIX.

EXTRACTS FROM THE UNITED STATES REVISED STATUTES.

SEC. 1394. Cadet engineers who are graduated with credit in the scientific and mechanical class of the Naval Academy may, upon the recommendation of the academic board, be appointed by the President and confirmed by the Senate as second assistant engineers.

SEC. 1515. All candidates for admission into the Academy shall be examined according to such regulations and at such stated times as the Secretary of the Navy may prescribe. Candidates rejected at such examination shall not have the privilege of another examination for admission to the same class, unless recomended by the board of examiners.

SEC. 1519. Cadet-midshipmen found deficient at any examination shall not be continued at the Academy or in the service unless upon the recommendation of the academic board.

SEC. 1520. The academic course of cadet-midshipmen shall be six years.

SEC. 1521. When cadet-midshipmen shall have passed successfully the graduating examination at the Academy, they shall receive appointments as midshipmen and shall take rank according to their proficiency as shown by the order of their merit at date of graduation.

SEC. 1523. Cadet-engineers shall be appointed by the Secretary of the Navy. Tney shall not at any time exceed fifty in number, and no person, other than midshipmen, shall be eligible for appointment unless they shall first produce satisfactory evidence of mechanical skill and proficiency, and shall have passed an examination as to their mental and physical qualifications.

SEC. 1524. The course for cadet-engineers shall be four years, including two years of service on naval steamers.

SEC. 1525. Cadet-engineers shall be examined from time to time, according to regulations prescribed by the Secretary of the Navy, and if found deficient at any examination, or if dismissed for misconduct, they shall not be continued in the Academy or in the service except upon the recommendation of the academic board.

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FILED
JAN 6 1886
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1885.

THE UNITED STATES, APPELLANT,
vs.
DE WITT C. REDGRAVE. } No. 985.

Appellant's Supplemental Brief.

It may be said, in addition to what is advanced in the brief, that if Congress did not mean to include in the term "undergraduates," as employed in the act of the 5th August, 1882, cadet-engineers who had then passed successfully the examination at the end of four years, but understood such cadet-engineers to be *graduates*, it is difficult to comprehend what suggested the saving clause in the act that nothing contained in it should "*deprive of such appointment any graduate who may complete the six years' course during the year eighteen hundred and eighty-two.*"